IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6820 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAGINBHAI NATHABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR SA SUBRAMANIAN for Petitioner

MR PR ABICHANDANI, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/06/2001

ORAL JUDGEMENT

Rule. Mr PR Abichandani, learned AGP waives service of Rule on behalf of the respondents.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 13.7.1999 (Annexure "B") passed by the Commissioner

of Transport, Gujarat State and the consequential notice dated 17.8.1999 (Annexure "D") issued by the Chief Road Transport Officer, Nadiad requiring the petitioner to pay tax of Rs.3,22,000/- plus penalty of Rs.80,500/- on the ground that the non-use of the omni bus No. GJ-7-T-4123 during the period between 1.11.1995 to 31.3.1996 was not for the reasons beyond the control of the petitioner.

3. The aforesaid order and consequential notice are challenged on the ground that the same are contrary to the law laid down by this Court in the judgment dated 23.4.1998 in Special Civil Application No. 10356 of 1996.

4. When this petition came up for hearing today, Mr PR Abichandani, learned AGP appearing for the respondent authorities fairly states that the aforesaid decision of the Division Bench of this Court has been confirmed by the Hon'ble Supreme Court in State of Gujarat vs. Kaushikbhai K. Patel, AIR 2000 SC 2175.

5. Having read the aforesaid decision, it is absolutely clear that all that the respondent authorities are required to consider is whether in fact the vehicle in question was not used during the period in question. The authorities are not required to go into the question whether the non-use is for reasons beyond the control of the petitioner. This petition is accordingly required to be allowed with a direction to the authorities to reconsider the matter in light of the aforesaid principles laid by the Hon'ble Supreme Court.

6. The petition is accordingly partly allowed. The impugned order dated 13.7.1999 (Annexure "B") passed by the Commissioner of Transport and the consequential notice dated 17.8.1999 (Annexure "D") issued by the Chief Road Transport Officer, Nadiad are hereby quashed and set aside and the respondents are directed to reconsider the matter in light of the principles laid down by the Hon'ble Supreme Court in State of Gujarat vs. Kaushikbhai K. Patel, AIR 2000 SC 2175.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-